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IN AND BEFORE THE  
FEDERAL ELECTION COMMISSION

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On behalf of Respondents )  
Citizens for Matt Shaner, et al )  
Hill in his official capacity as Treasurer )

RE Matter Under Review 5990

**Response to Complaint and Motion to Dismiss**

This is filed on behalf of Citizens for Matt Shaner, the principal authorized committee for Republican congressional candidate Matt Shaner, (the "Committee") and Peter Hill, in his official capacity as treasurer, (hereafter "Respondents") in response to a complaint filed with the Federal Election Commission ("the Commission") by S Charles Picardi, a Pennsylvania voter ("Complainant") in the above-referenced Matter Under Review 5990 (hereafter "the Complaint")

The Complaint alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended, ("the Act" or "FECA") and the amendments included in the Bipartisan Campaign Reform Act of 2002, as amended ("BCRA") Specifically, the Complaint alleges that the Respondents violated the Act by obtaining the Complainant's name and address from reports posted on the Commission's website, and then soliciting a contribution from the Complainant in violation of 2 U S C §438(a)(4) and Commission regulations at 11 CFR §104.15 The Respondents submit this Response in support of their motion to the Commission to dismiss the Complaint

**Complaint Against Respondents Should be Dismissed**

The Respondents hereby move the Commission to dismiss the Complaint against the Respondents because the alleged violation of the law and regulations is not the sort of use for a "commercial purpose" proscribed by the statute and the Commission regulations Further, any violation that may have occurred was *de minimis* and inadvertent

### Facts

Matt Shaner was an unsuccessful candidate in the primary election for U S Representative from the Fifth Congressional District of Pennsylvania Mr Hill was employed by the Committee as campaign manager *See Exhibit A*, Affidavit of Peter Hill Prior to his employment with the Committee, Mr Hill was never employed by any other campaign committee, nor had he ever volunteered for a Congressional campaign or any other federal political committee regulated by the Commission *See Exhibit A*

On March 7, 2008, the Committee sent a letter by U S mail to 1,093 people *See Exhibit A and Exhibit B*, March 7 mailing The total cost of the mailing was \$2,012 87 *See Exhibit A* Of the 1,093 letters mailed, 109 letters were sent to people who had previously contributed money to Mr Shaner *See Exhibit A* Mr Hill obtained these names and addresses from the Committee's in-house database of previous donors *See Exhibit A* The remaining 984 letters were sent to people whose names Mr Hill collected from a record of individuals that contributed to Congressman John E Peterson ("Congressman Peterson"), as compiled by the Commission and posted on the Commission's website *See Exhibit A* Mr Hill sorted the donors listed on the Commission's website and found the names of 984 donors who had contributed \$500 or more to Congressman Peterson *See Exhibit A* Mr Hill and several Committee staffers then used phone books and internet search engines to find the corresponding addresses for each of the 984 names obtained from the Commission Report *See Exhibit A*

The proportional cost of the mailing at issue involving these 984 letters ("the Mailing") was \$1,811 58 *See Exhibit A* The Committee received no responses to the Mailing, and received no contributions in connection with the Mailing *See Exhibit A* Furthermore, the Committee received no contributions at any time from any person who received a solicitation in the Mailing *See Exhibit A*

Mr Hill directed the development of the potential donor list but had no knowledge that federal law or Commission regulations restricted the use of names retrieved from reports posted on the Commission's website until after the Mailing was concluded *See Exhibit A*

**The Alleged Violation of the Law and Regulations is not the Sort of "Commercial Purpose"**

**Envisioned by the Statute and the Commission Regulations**

The Commission's regulations state in Section 11 CFR 104 15(a) that "[a]ny information copied, or otherwise obtained from any report or statement, or any copy, reproduction, or publication thereof, filed under the Act, shall not be sold or used by any person for the purpose of soliciting contributions or for any *commercial purpose* "<sup>1</sup> This Complaint should be dismissed because the Committee did not use the names it obtained from the Commission's website for any commercial purpose as defined by the Commission in various advisory opinions and as contemplated by the drafters of the statute

On August 5, 1971, the 92<sup>nd</sup> Congress debated amending 2 U S C §438(a)(4) to add a provision stating "information copied from [Commission] reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose "<sup>2</sup> According to the Congressional Record, Senator Gaylord Nelson (D-WI) from Wisconsin asked Senator Henry Bellmon (R-OK) whether "the *only* purpose [of the amendment] is to prohibit the lists [of donors] from being used for commercial purposes "<sup>3</sup> Senator Bellmon verified that prohibiting use of "the lists" for commercial purposes was the "only purpose" of the

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<sup>1</sup> 11 CFR 104 15(a)(emphasis added)

<sup>2</sup> See 117 Cong Rec 30057 (1971) This amendment was agreed to, and the current version of the statute is very similar to the text of the amendment as found in the Congressional Record See 2 U S C §834(a)(4) ("except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes ")

<sup>3</sup> See *id* At 30058(emphasis added)

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amendment <sup>4</sup> The Senators continued to discuss that while it would be permissible, under the amendment, for newspapers to publish the names of contributors and the amounts that they contributed, the amendment would effectively prohibit list brokers from selling the lists or using the lists for commercial solicitation <sup>5</sup> The amendment was agreed to after this discussion <sup>6</sup>

The congressional intent behind 2 U S C §438(a)(4) and the accompanying Commission regulation is clear – the “principal, if not *sole*, purpose”<sup>7</sup> of the statute, as amended, is to “prohibit the lists from being used for commercial purposes”<sup>8</sup> Because the Respondents did not use any of the names obtained from the Commission’s website for any commercial purpose, this Complaint against the Respondents must be dismissed

In Advisory Opinions related to the use of information pulled from Commission reports, the Commission explained that “the purpose of restricting the sale or use of information obtained from [Commission] reports is to protect contributors from having their names sold or used for commercial purposes”<sup>9</sup> The Commission has narrowly applied the “commercial purpose” restriction in the statute to “protect individuals who make contributions to campaigns from being victimized by list-brokering”<sup>10</sup> and has stated that the statute is not to be applied to suppress financial information <sup>11</sup>

In the instant case, Respondents did not use the names obtained from the Commission website for any commercial purpose Respondents did not sell or distribute in any manner any of

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<sup>4</sup> See *id*

<sup>5</sup> See *id*

<sup>6</sup> See *id*

<sup>7</sup> Advisory Opinion 1981-5 (emphasis added)

<sup>8</sup> See *id* At 30058

<sup>9</sup> See Advisory Opinion 2004-24

<sup>10</sup> See Advisory Opinion 1988-2, *see also, e.g.* Advisory Opinions 1984-2, 1981-38, 1981-5, 1980-78

<sup>11</sup> See Advisory Opinion 1981-38

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the names obtained from Commission reports *See Exhibit A* Respondents did not engage in the "list-brokering" contemplated by Congress and the Commission, nor did Respondents use the names obtained from the Commission website for any other commercial purpose as revealed in the legislative history for 2 U S C §438(a)(4), or as expounded upon by the Commission in its Advisory Opinions

For example, in Advisory Opinion 1995-5, a political committee requested an advisory opinion to determine whether its proposed use of names pulled from the Commission website would be classified as an impermissible commercial purpose according to federal law and Commission regulations In finding that the political committee's proposed activity was prohibited, the Commission stated that the "prohibition against use for commercial purposes extends to encompass commercial purposes that could make contributors vulnerable to all kinds of solicitations "<sup>12</sup> Even according to this broad and inclusive concept of "commercial purposes," Respondents alleged activities certainly do not fall within this category of conduct proscribed by the Commission The Complainant does not allege that Respondents engaged in any conduct that resulted in making the Complainant, or anyone else, "vulnerable to all kinds of solicitations "<sup>13</sup> Respondents did not at any time disseminate, publish, or release any of the names collected from the Commission's website, and Respondents' alleged activities did not create any opportunity for solicitations to be sent to any individual or household Respondents clearly did not use the names that Respondents obtained from the Commission's website for a commercial purpose as defined by the Commission

In Advisory Opinion 1985-16, the Commission found that a proposed use of the Commission records would not be permissible under 11 CFR 104.5(a), in part because the use of

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<sup>12</sup> *See* Advisory Opinion 1995-5

<sup>13</sup> *Id*

the Commission records created a product with a "special commercial value"<sup>14</sup> Respondents' alleged use of the names pulled from the Commission's website did not create any product at all, and certainly did not result in creating any commercial value of any sort Respondents did not receive a single reply or contribution in response to their use of the names from Commission records Even under the "special commercial value" standard, Respondents did not use the names gathered from the Commission's website for any commercial purpose whatsoever

The "principal, if not sole, purpose" of restricting the use of information copied from Commission reports is to protect citizens from the use of their names for a commercial purpose<sup>15</sup> Because Respondents did not engage in creating, selling or otherwise distributing any list with any names, and because Respondents activities did not leave any person any more "vulnerable" to solicitations, and, lastly, because Respondents activities did not result in any increased "special commercial value" of any sort, this Complaint against Respondents must be dismissed

**The Alleged Violation of the Law and Regulations was *De Minimis* and Inadvertent**

The Respondents solicitation of Complainant and others does not constitute an offense sufficient to warrant Commission action Not only should this Complaint be dismissed because the Committee did not use the names it obtained from the Commission's website for a commercial purpose as contemplated by the drafters of the statute, but the Complaint should also be dismissed because the alleged solicitation was *de minimis* and inadvertent

The alleged violation in the instant case is certainly *de minimis* The Complaint alleges that the Complainant received one letter from the Committee at his home address on or about March 8, 2008, and alleges that the Respondents violated federal law by obtaining the Complainant's name and address from the Commission's publicly available website and by

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<sup>14</sup> See Advisory Opinion 1985-16

<sup>15</sup> Advisory Opinion 1981-5

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sending the Complainant one letter on March 7, 2008 In Advisory Opinion 2003-24, the Commission stated that where proposed communications are both "repetitive" and "intrusive", the communications "fall within the realm of 'harassment' Congress wanted to prevent" in 2 U S C §438(a)(4) <sup>16</sup> The Complainant's receipt of one letter and the Committee's distribution of one solicitation do not amount to "repetitive" and "intrusive" harms that warrant reprimand under federal law and Commission regulations, but merely amount to *de minimis* activity unworthy of reprobation under statute and Commission regulations

Furthermore, the scope of and response to the solicitation further support the *de minimis* nature of the Committee's actions The Respondents sent only 984 letters to persons whose names were retrieved from the Commission's publicly available website *Exhibit A* The proportional cost of the mailing was \$1,811 58 See *Exhibit A* The Committee received no response to any of the 984 letters mailed, and received no contributions in connection with this portion of the mailing *Exhibit A* The Committee did not otherwise use the names that it obtained from the Commission's website See *Exhibit A* In sum, in addition to the lack of a "commercial purpose" as contemplated under the statute, the Complaint must also be dismissed because the alleged solicitation was *de minimis*

Not only was the violation alleged in the Complaint *de minimis*, but it was also completely inadvertent Mr Hill had no knowledge that federal law or Commission regulations restrict the use of names retrieved from reports posted on the Commission's website See *Exhibit A* Additionally, none of the Committee volunteers that assisted in finding the addresses for the 984 names had any knowledge that Mr Hill obtained the names from the Commission's record See *Exhibit A*

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<sup>16</sup> See Advisory Opinion 2003-24, 117 Cong Rec 30057 (1971)(statement of Senator Bellmon)

Thus, the Commission should dismiss the Complainant's allegations of an impermissible solicitation under 11 CFR §104 because the Respondents' alleged solicitation was both *de minimis* and any violation of the regulations was purely inadvertent

**Conclusion**

Neither 2 U S C §438(a)(4), nor 11 CFR §104 15 were intended to prohibit and proscribe the sort of activity alleged by the Complainant Respondents' alleged violation of the law and regulations was not the sort of use for a "commercial purpose" envisioned by the statute and the Commission regulations, and was also *de minimis* in nature and entirely inadvertent Accordingly, the complaint against Citizens for Matt Shaner and Peter Hill, in his official capacity as Treasurer, should be dismissed

Respectfully Submitted,



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Date

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